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15 Attorneys for Plaintiff  
16 UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT

18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,

20 No. ED CR 17-00100-RGK

21 Plaintiff,

22 GOVERNMENT'S SENTENCING POSITION

23 v.

24 Hearing Date: June 11, 2018

25 Hearing Time: 1:30 p.m.

26 Location: Courtroom of the  
27 Hon. R. Gary  
28 Klausner

Plaintiff.  
Defendant.

Plaintiff United States of America, by and through its counsel of record, the United States Attorney for the Central District of California and Assistant United States Attorney Amy E. Pomerantz, hereby files its sentencing position.

This sentencing position is based upon the attached memorandum

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1 of points and authorities, the files and records in this case, and  
2 such further evidence and argument as the Court may permit.

3 Dated: May 30, 2018

Respectfully submitted,

4 NICOLA T. HANNA  
United States Attorney

5 LAWRENCE S. MIDDLETON  
6 Assistant United States Attorney  
Chief, Criminal Division

7  
8 /s/  
9 AMY E. POMERANTZ  
Assistant United States Attorney

10 Attorneys for Plaintiff  
11 UNITED STATES OF AMERICA

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Upon his plea of guilty, defendant was convicted of being a felon in possession of ammunition in violation of 18 U.S.C. § 922(g)(1). (CR 67.)

6 On April 17, 2018, the United States Probation Office ("USPO")  
7 filed its Presentence Investigation Report ("PSR") in this matter.  
8 (CR 69.) As detailed in the PSR, the USPO has determined that the  
9 total offense level under the United States Sentencing Guidelines  
10 ("USSG") applicable to defendant's conviction is 15; that defendant's  
11 criminal history places him within criminal history category I; and  
12 that the applicable USSG range of imprisonment is therefore 18-24  
13 months. The government does not object to the USPO's calculations of  
14 defendant's total offense level or criminal history category.

15 Consistent with the plea agreement between the parties, the  
16 government recommends that defendant be sentenced to a term of  
17 imprisonment within the applicable guidelines range, as determined by  
18 the Court. The government believes the applicable guidelines range  
19 is 18-24 months, as calculated by the USPO. The government further  
20 recommends that defendant's term of imprisonment be followed by a  
21 term of supervised release within the guidelines range of one to  
22 three years, and that defendant be ordered to pay the mandatory  
23 special assessment of \$100.

24 II. STATEMENT OF FACTS

25 On or about February 19, 2017, defendant was observed purchasing  
26 1,000 rounds of 9mm caliber ammunition at the San Bernardino County  
27 Fair Grounds. (PSR ¶ 10.) Law enforcement approached defendant and  
28 recovered the ammunition, as well as six detachable standard capacity

1 magazines from his vehicle. (PSR ¶ 11.) Later the same day, a  
2 search warrant was executed at defendant's residence, resulting in  
3 the recovery of numerous firearms and ammunition, as described in the  
4 plea agreement and PSR. (See PSR ¶¶ 12-14.)

5 Because defendant previously had been convicted of a felony  
6 crime punishable by a term of imprisonment exceeding one year, he was  
7 charged in this case with being a felon in possession of a firearm  
8 and ammunition in violation of 18 U.S.C. § 922(g).<sup>1</sup>

9 **III. THE PRESENTENCE REPORT**

10 The USPO calculated defendant's Sentencing Guidelines Offense  
11 Level as follows:

12 Base Offense Level:	14	U.S.S.G. § 2K2.1(a)
13 Special Offense 14 Characteristics [8-24 firearms]:	+4	U.S.S.G. § 2K2.1(b)(1)
15 Acceptance of Responsibility:	-3	U.S.S.G. § 3E1.1
16 Total Offense Level:	15	

17 (PSR ¶¶ 26-41.) The government does not object to the USPO's  
18 calculation of defendant's total offense level. Nor does the  
19 government object to the USPO's calculation of defendant's criminal  
20 history category, which it determined to be criminal history category  
21 I. (PSR ¶ 49.)

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24 <sup>1</sup> Although defendant was initially charged with possession of  
25 machine guns in violation of 18 U.S.C. § 922(o), the government did  
26 not oppose defendant's motion to dismiss that charge. Accordingly,  
27 the USPO "has not concluded that the lower receivers [as charged in  
28 Counts 2 and 3 of the Indictment], are considered  
machineguns/firearms under 18 U.S.C. §922(o), 26 U.S.C.  
§ 5845(b), or 18 U.S.C. § 921(a)(3)," and therefore the government is  
not seeking any additional enhancements on this basis. (PSR ¶ 26  
n.6.)

1       According to the PSR, defense counsel submitted a memorandum to  
2 the USPO advocating for a six-level reduction in offense level on  
3 grounds that the firearms were used exclusively for "lawful sporting  
4 purposes or collection," within the meaning of U.S.S.G.

5 § 2K2.1(b)(2).<sup>2</sup> (PSR ¶ 30.) The USPO, however, rejected defendant's  
6 analysis and concluded that a six-level reduction under U.S.S.G.  
7 § 2K2.1(b)(2) does not apply in this case. (PSR ¶¶ 31-33.) The  
8 government agrees with the USPO's finding.

9 **IV. THE GOVERNMENT'S SENTENCING POSITION**

10       The government recommends that the Court sentence defendant to a  
11 term of imprisonment within the applicable guidelines range, as  
12 determined by the Court; a term of supervised release between one and  
13 three years; and a mandatory special assessment of \$100. The  
14 government agrees with the USPO that the applicable guideline range  
15 is 18-24 months, and makes no recommendation as to the point within  
16 the applicable guidelines range at which a term of imprisonment  
17 should be selected. A within-guidelines sentence appropriately  
18 reflects the nature and circumstances of the offense, as well as the  
19 history and characteristics of the defendant. 18 U.S.C.  
20 § 3553(a)(1). Such a sentence would also be sufficient, but not  
21 greater than necessary, to comply with the purposes set forth in 18  
22 U.S.C. § 3553(a)(2).

23 **V. CONCLUSION**

24       For the foregoing reasons, a term of imprisonment within the  
25 guidelines range determined by the Court; followed by a period of  
26 supervised release between one and three years; and a mandatory

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28       <sup>2</sup> Defense counsel did not provide a copy of this memorandum to  
the government.

1 special assessment of \$100, would be sufficient, but not greater than  
2 necessary, to comply with the purposes of 18 U.S.C. § 3553(a). The  
3 government respectfully requests that the Court sentence defendant  
4 accordingly.

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